

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jayne Lacy)	
)	FILED: AUGUST 8, 2008
Plaintiff,)	08CV4496
)	JUDGE KENNELLY
v.)	MAGISTRATE JUDGE BROWN
)	EDA
Michael Chertoff, Secretary of U.S. Department)	
of Homeland Security; Ruth Dorochoff,)	
United States Citizenship & Immigration Service,)	
Chicago District Director; Michael Mukasey,)	
U.S. Attorney General; Robert F. Mueller, III,)	
Director of Federal Bureau of Investigation;)	
and the United States of America.)	
)	
Defendants.)	

COMPLAINT FOR WRIT OF MANDAMUS

NOW COMES the Plaintiff Jayne Lacy (hereinafter "Plaintiff"), by and through their attorneys, AzulaySeiden LawGroup, and complain as follows:

STATEMENT OF ACTION

1. This action is brought to compel action on Plaintiff's properly filed Application for Lawful Permanent Resident Status ("I-485") with United States Citizenship & Immigration Services ("USCIS") in Chicago. To the Plaintiff's detriment, Defendants have failed to adjudicate the application.

PARTIES

2. Plaintiff, Jayne Lacy, is a native and citizen of the Philippines. She is married to Ninety Lacy, a naturalized U.S. Citizen. Plaintiff filed an Application for Lawful Permanent Resident Status (Form I-485) under §245 of the Immigration and

Nationality Act on October 8, 2004, concurrently with a Petition for Alien Relative (Form I-130) filed on behalf of Plaintiff by her husband.

3. Defendant Michael CHERTOFF ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Chertoff is responsible for adjudication of I-485 applications pursuant to 8 U.S.C. §1225.
4. Defendant Michael MUKASEY ("Mukasey"), is the Attorney General of the United States and is being sued in his official capacity only. Mukasey is responsible for the adjudication of I-485 applications pursuant to 8 U.S.C. §1225.
5. Defendant Ruth DOROCHOFF ("Dorochoff"), the District Director of Chicago CIS, is being sued in her official capacity only. Dorochoff is charged with supervisory authority over all of Chicago CIS operations and CIS agents and officers acting in their official capacity.
6. Defendant Robert F. MUELLER, III ("Mueller"), the Director of the Federal Bureau of Investigation, is being sued in his official capacity only. Mueller is charged with supervisory authority over all of FBI operations and FBI agents and officers acting in their official capacity.

JURISDICTION

7. This Court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. §1331; 28 U.S.C. §1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§2201-2202. Relief is requested pursuant to said statutes.

8. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the law of the United States.
9. This Court has jurisdiction to hear actions arising from claims that an agency or an officer or employee of a government agency failed to act in its official capacity and the person to whom the duty owed suffered a legal wrong. 5 U.S.C. §702.
10. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction.
11. This action is brought due to the failure of the USCIS and its officers to perform their duty to adjudicate the Plaintiff's I-485 Applications for Lawful Permanent Resident Status within a reasonable amount of time. Failure to adjudicate the application has resulted in harm to the Plaintiff.
12. Federal courts retain jurisdiction over adjudication matters when the INS (now USCIS) refuses to adjudicate their applications. *Iddir v. INS*, 166 F.Supp.2d 1250, 1260 (N.D. Ill. 2001).
13. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") does not divest this Court of jurisdiction because the Plaintiffs are not seeking a review of a denial; they are seeking to have the application adjudicated, which is among the duties conferred upon the Defendants by Congress. *Id.* at 1256.

VENUE

14. Venue is proper in this court pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred.
15. Plaintiff's I-485 Application for Lawful Permanent Resident Status was properly filed and, to Plaintiff's knowledge, remains pending with the Chicago USCIS District Director.

EXHAUSTION OF REMEDIES

15. Plaintiff has exhausted all administrative remedies. Plaintiff, through her attorneys and Congresswoman, has made numerous inquiries concerning the status of her I-485 and Defendants have provided stock responses that background checks are still pending. *Exhibit 1: Response to Congresswoman Jan Schakowsky's inquiry to USCIS.*

CAUSE OF ACTION

16. On April 21, 2005, an I-130 Petition filed on behalf of Plaintiff was approved by USCIS at an interview conducted at the USCIS Office in Chicago. *See Exhibit 2: I-130 Receipt Notice; Exhibit 3: I-485 Receipt Notice; Exhibit 4: Interview notice for April 21, 2005.* The petition classifies Plaintiff as an immediate relative and makes a visa immediately available to her.

17. At the same interview, a Request for Evidence was issued to the Plaintiff. *See Exhibit 5: Request for Evidence.* Plaintiff responded in a timely manner to the request.
18. Plaintiff's application has now been pending with the USCIS District Office without decision since April 2005. A check of the USCIS website case status information on August 8, 2008, reveals that the case is still pending. *See Exhibit 6: case status printout.*
19. Plaintiff has been greatly damaged by the failure of the Defendants to act in accord with their duties under law. Plaintiff has a meritorious application for adjustment of status to that of lawful permanent resident which cannot be adjudicated because of Defendants' refusal to do so.
20. The Defendants delay in processing of Plaintiff's application has further deprived the Plaintiff of her right to due process under the law as provided by the Fifth Amendment of the United States Constitution.
21. The Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. §701 *et seq.* are unlawfully withholding and unreasonably delaying action on Plaintiffs' application and have subsequently failed to carry out the adjudicative functions delegated to them by law with regard to the Plaintiffs' case.
22. Plaintiff has made numerous status inquiries (including through her Congresswoman) in the attempt to secure adjudication of her application, to no avail. Accordingly, Plaintiff has been forced to pursue the instant action.

PRAYER

WHEREFORE, Plaintiff requests that this Honorable Court enter an order:

- (a) Requiring Defendants to adjudicate Plaintiff's Application for Lawful Permanent Resident Status (I-485); and
- (b) Awarding Plaintiff reasonable attorney's fees pursuant to 28 U.S.C. §2412 for failure of the Defendants to perform their duties within a reasonable amount of time.

Respectfully submitted,
Jayne Lacy

By: s/Kevin A. Raica
Kevin A. Raica

AzulaySeiden Law Group
205 North Michigan Ave., 40th Floor
Chicago, IL 60601
(312) 832.9200 x 160
Atty No: 6283793

From: USCIS Chicago District Office
Sent: Thursday, May 10, 2007 3:31 PM
To: Friedlieb, Rachael
Subject: A99194986

The Honorable Jan Schakowsky
U.S. Representative
5533 N. Broadway
Chicago, IL 60640
Attn: Rachel Friedlieb

May 10, 2007

A99-194-986 Jayne Lacy

Dear Congresswoman Schakowsky:

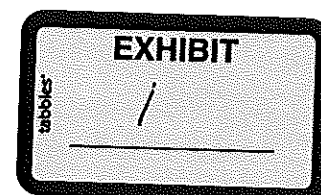
United States Citizenship and Immigration Services (USCIS) are committed to adjudicating immigration benefits in a timely manner while also ensuring public safety and national security. Though background checks for most applications or petitions are completed very quickly, a small percentage of cases have unresolved background check issues that temporarily delay adjudication of the application or petition. Although USCIS makes every effort to resolve such cases promptly, the agency cannot move forward until all outstanding issues have been resolved to our satisfaction. Unfortunately, this process can sometimes take years.

The background checks involve more than just the initial submission of biographical information or fingerprints and the initial response. If these checks and/or a review of the administrative record reveal an issue potentially impacting an applicant's eligibility for the requested immigration benefit, further inquiry is needed. The inquiry may include an additional interview and/or the need to contact another agency for updates or more comprehensive information. If it is determined that an outside agency possesses information relevant to the applicant's background, USCIS asks that agency to share any relevant information for consideration by USCIS in the adjudication. Upon gathering and assessing all available information, USCIS will adjudicate the application as expeditiously as possible.

We have checked into your constituent's case and have been assured that the agency is aware of your inquiry and is monitoring progress of the case.

USCIS realizes that your constituent may be frustrated by the progress of his or her case, but the agency must balance individual inconvenience against broader issues of public safety and national security. We hope that the recognition that your constituent's case has not been forgotten lessens any anxiety stemming from the delay in the adjudication.

We hope the information provided is helpful. If we may be of assistance in the future, please let us know.



* JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

CHIEF DEPUTY WHIP

1027 LONGWORTH HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-226-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

May 10, 2007

5533 N. BROADWAY, SUITE 2
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

820 DAVIS STREET, SUITE 105
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3409
Fax: 847-328-3425

1420 RENAISSANCE DRIVE, SUITE 102
PARK RIDGE, IL 60068
Telephone: 847-298-2128
Fax: 847-298-2173

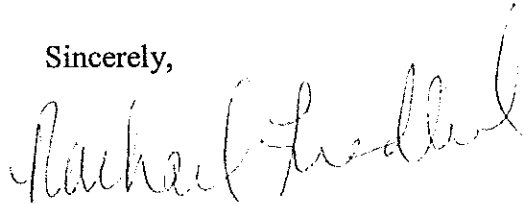
Ms. Jayne Lacy
2618 North Mango Avenue
Chicago, Illinois 60639-1211

Dear Ms. Lacy:

Our office has received a response to the Congressional Inquiry we launched with the U.S. Citizenship and Immigration Services (USCIS) on your behalf. Enclosed please find a copy of the letter from Mr. Robert L. Blackwood, Field Office Director of the USCIS.

If you should have any further questions or comments, please contact me by phone at (773) 506 – 7100, by fax at (773) 506 – 9202 or by email at rachael.friedlieb@mail.house.gov. Thank you for your patience in this matter.

Sincerely,



Rachael Friedlieb
Constituent Advocate

Enclosure

P.S. I've created an **Email Newsletter** to provide periodic updates on a variety of issues. You can sign up for it by going to my website at <http://www.house.gov/schakowsky>.



Receipt Number: MSC-05-011-14029		Case Type: I-130 - Petition for Alien Relative
Received Date: October 08, 2004	Priority Date:	Petitioner: LACY, NINETY
Notice Date: October 13, 2004	Page: 1 OF 1	Beneficiary: LACY, JAYNE

NINETY LACY
4222 N WHIPPLE APT 1
CHICAGO IL 60618

Notice Type:	Receipt Notice
Amount Received:	\$185.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES
P.O. BOX 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



5049252

A001491660

Form



UNITED STATES OF AMERICA

Receipt Number: MSC-05-011-14027		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status	
Received Date: October 08, 2004	Priority Date:	Applicant: A099194986 LACY, JAYNE	
Notice Date: October 13, 2004	Page 1 OF 1	ASC Code: 3	

JAYNE LACY
4222 N WHIPPLE APT 1
CHICAGO IL 60618

OCT 21 2004

BIOMETRICS PROCESSING STAMP	
BIOM SITE CODE: MP	Notice Type: BIOMETRICS REVIEW BY:
ASC SITE CODE: 101710	Amount Received: \$5800
BIOMETRICS REVIEW BY:	TENPRINTS REVIEW BY:
TENPRINTS REVIEW BY:	TENPRINTS REVIEW BY:

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

FINGERPRINTING AND BIOMETRICS-

The next step is to have your fingerprints and biometrics taken at a BCIS Application Support Center (ASC).

Call our National Customer Service Center (NCSC) at 1-800-375-5283 to schedule your appointment. For TDD hearing impaired assistance, please call 1-800-767-1833.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at 1-800-375-5283.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. BOX 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



5049252

A001491660

P. 4

773-769-2553

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EXHIBIT

3

NOTICE DATE
December 15, 2004

FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

A 099 194 986

APPLICATION NUMBER
MSC0501114027

RECEIVED DATE
October 08, 2004

PRIORITY DATE
October 08, 2004

PAGE
1 of 1

APPLICANT NAME AND MAILING ADDRESS

JAYNE M LACY
4222 N WHIPPLE APT 1
CHICAGO IL 60618

PLEASE COME TO: U.S. Citizenship and Immigration Services
230 S. DEARBORN STREET
KLUCZYNSKI FEDERAL BLDG
2ND FLOOR
CHICAGO IL 60604

6

[illegible]

ON: Thursday, April 21, 2005
AT: 10:40 AM

AT: 10:40 AM
 You are hereby notified to appear for the interview appointment, as scheduled above, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485). Failure to appear may result in the denial of your application.

Who should come with you?

- If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- If you do not speak English fluently, you should bring an interpreter who is neither a relative nor an interested party in your application.
- Your attorney or authorized representative may come with you to the interview.

NOTE: Every adult who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

What **MUST** you bring?

- Bring this Interview Notice.
- Bring your Government-issued photo identification.
- Bring all your Passports and any other documents, including your Arrival/Departure Document (Form I-94), used to enter the United States.
- Bring your Birth Certificate.
- Bring all documentation establishing your eligibility for Lawful Permanent Resident status (see below: "What else should you bring?").
- Bring all immigration-related documentation ever issued to you.
- Bring both originals and photocopies of all supporting documents. Otherwise, we may keep your originals for our records.
- Bring a certified English translation for each document not in English. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

What else should you bring?

- Bring any Employment Authorization card or paper, and any Authorization for Advance Parole (Form I-512) ever issued to you.
- Bring your petitioner's Birth Certificate *and* your petitioner's evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have children, bring a Birth Certificate for each of your children.
- If you are married, bring your Marriage Certificate.
- If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
 - Your spouse's Birth Certificate *and* your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
 - If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
 - Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
 - Supporting evidence of your relationship, such as joint financial statements, joint legal documents, joint insurance policies, and photos.
- If you have not already submitted it, bring a completed medical examination (Form I-693) *and* vaccination supplement in a sealed envelope.
- Bring your Federal Income Tax returns *and* W-2's, or certified IRS printouts, for the past 3 years.
- If you are employed, bring letters from each of your current employers on company stationery, verifying your current rate of pay *and* average weekly hours, *and* bring your pay stubs for the past 2 months.
- Bring completed Affidavit(s) of Support (Form I-864), with all required evidence, including the following for each of your sponsors:
 - Federal Income Tax returns *and* W-2's, or certified IRS printouts, for the past 3 years;
 - Letters from each current employer on company stationery, verifying current rate of pay *and* average weekly hours, *and* pay stubs for the past 2 months;
 - Evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have ever been arrested, for each arrest, bring the related Police Report and the original or certified Final Court Disposition, even if the charges have been dismissed or expunged. If no court record is available, furnish a letter from the court with jurisdiction indicating this.

PLEASE MAKE EVERY EFFORT TO KEEP YOUR APPOINTMENT, even if you do not have all the listed items. If an emergency, such as the hospitalization of a close relative, prevents you from appearing, call the Citizenship and Immigration Services (CIS) customer service as soon as possible. Please be advised that rescheduling will delay processing, may require some steps to be repeated, and will affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call CIS customer service at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

APPLICANT COPY



EXHIBIT

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Form 1

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773-769-2553

Итого Сабович

d r

U.S. Department of Homeland Security
 U.S. Citizenship and Immigration Services
 10 W. Jackson Blvd. Room 323
 Chicago, Illinois 60604
 Attn: OFFICER

PLEASE RETURN THIS LETTER WITH YOUR RESPONSE.

Leonitis - Ruiz

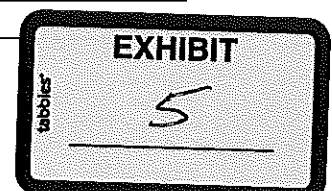
Name:

Alien Registration Number: A

PLEASE COMPLY WITH THE BELOW CHECKED ☒ INSTRUCTIONS

- ☐ 1. Please complete the blocks on your enclosed application/petition/form which are highlighted.
- ☐ 2. Furnish the required fee of \$_____ for Form_____.
- ☐ 3. A foreign document must be accompanied by a translation in English. The translator must certify that he/she is competent to translate and that the translation is accurate.
- ☐ 4. Furnish the date and port of each of your entries into the United States and the name of the ship, plane, or other vehicle on which you traveled or provide a sworn statement of how you entered the United States.
- ☐ 5. Furnish two (2) color photographs. These photos must have a white background, photos must be glossy, unretouched, and not mounted. Dimension of the facial image should be about 1 inch from the chin to top of hair or head, shown in 3/4 frontal view of right side of face with right ear visible.
- ☒ 6. I-864 Affidavit of Support and last three years of tax returns, W2s and a job letter for ☒ Sponsor and/or ☒ Joint Sponsor. This form must be completely filled out and notarized. Failure to follow the directions and complete this form accurately may result in denial of your application.
7. You must provide a sworn statement for **each and every arrest** and for charges against you including the dates and places. You must provide **certified court dispositions** (not police reports) for **each and every arrest** and charge.
- ☐ 8. Your case is continued for your fingerprints to clear.
- ☐ 9. Your case is continued because you need to submit new fingerprints. (See attached fingerprint referral letter).
10. Submit medical exam (Form I-693) and immunization supplement form from an INS Certified Civil Surgeon. These documents must be in a sealed envelope from the doctor.
- ☐ 11. Please submit the following types of evidence to support the claimed relationship between the petitioner and the beneficiary:
- ☐ a. Official Birth Certificates for you and your spouse and any children, yours and your spouse's, born in or outside the United States along with the necessary English translations.
 - ☐ b. Official Marriage Certificate for _____.
 - ☐ c. Proof of termination of previous marriages, such as divorce decrees and death certificates.
 - ☐ d. Wedding photos and other photos of you and your spouse together during your entire relationship.
 - ☐ e. Proof of any joint purchases or ownership, such as TV, furniture, car, house, etc.
 - ☐ f. Proof of joint credit established since marriage, such as joint credit cards, loans, etc.
 - ☐ g. Proof of actual residence such as lease agreements, property deeds or mortgages, etc. If you have none of the above, provide a notarized affidavit from your current landlord.
 - ☐ h. Proof of bank statements for checking and/or savings accounts and canceled checks throughout your marriage.
 - ☐ i. IRS Federal Tax Returns with W2s for years _____.
 - ☐ j. Proof of medical, life and auto insurance during your marriage.
 - ☐ k. Proof of utility bills for a shared residence, such as telephone, electric, gas, etc. You should provide statements that cover the duration of your marriage.
- ☐ 12. OTHER: _____

PLEASE RETURN THIS LETTER AND ALL ATTACHMENTS WITH YOUR RESPONSE



U.S. Citizenship and Immigration Services
10 West Jackson Boulevard
Chicago, Illinois 60604

Jayne Lacey
4332 N. Whipple Ave.
Chicago, IL 60618

Date: 4/21/05
A Number: A 99 174 986
Petitioner:
Beneficiary:
Case Type: I-485

REQUEST FOR EVIDENCE

PLACE THIS LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

The documentation you submitted during the adjustment interview is not sufficient to warrant a favorable consideration of your petition/application. The following information also is required:

See attached list

Your response must be received in this office within 84 days. Your case is being held pending awaiting your response, however you are encouraged to submit the evidence without delay so as to complete your case. Within this period you may:

1. Submit all of the evidence requested;
2. Submit some or none of the evidence requested and ask for a decision based on the record; or
3. Withdraw the application or petition. (It is noted that if you request the application or petition be withdrawn; the filing fee may not be refunded).

You must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record. No extension of the period allowed submitting evidence will be granted. If the evidence submitted does not establish that your case was approvable at the time it was filed, it can be denied.

If you do not respond to this request within the time allowed, your case will be considered abandoned and denied due to lack of prosecution. Evidence received in this office after the due date may not be considered.

You are instructed to submit the requested documentation: MAIL IN to the attention of Officer LEONARD R. RIZZO at USCIS, Customer Service, P.O. Box 3616, Chicago, Illinois, 60690-3616.

Sincerely,

Michael M. Comfort
Michael M. Comfort
District Director

7/13/05

Case Status Search

Receipt Number: msc0501114027

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO
ADJUST STATUS

Current Status:

Response to request for evidence received, and case processing has resumed.

On November 10, 2004, we received your response to our request for evidence. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. You should expect to receive a written decision or written update within 60 days of the date we received your response unless fingerprint processing or an interview are standard parts of case processing and have not yet been completed, in which case you can use our processing dates to estimate when this case will be done. This case is at our NATIONAL BENEFITS CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

